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# Message Text

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ACTION EUR-12

INFO OCT-01 EA-07 ISO-00 AID-05 CEA-01 CIAE-00 COME-00
EB-08 FRB-03 INR-07 NSAE-00 SP-02 STR-04 TRSE-00
LAB-04 SIL-01 OMB-01 OES-07 NRC-05 ERDA-05
USIA-06 NSC-05 SS-15 L-03 H-01 PA-01 PRS-01
EURE-00 FTC-01 JUSE-00 /106 W
----------029163 011247Z /53
P R 011218Z AUG 77
FM AMEMBASSY LONDON
TO SECSTATE WASHDC PRIORITY 6672
INFO AMEMBASSY BRUSSELS
AMEMBASSY OTTAWA
AMEMBASSY PARIS
AMEMBASSY CANBERRA

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USEEC

E.O. 11652: N/A
TAGS: ETRD, UK, US
SUBJECT: ANTITRUST: URANIUM PRODUCERS' CARTEL --
RECENT DEVELOPMENTS

REF: LONDON 16079

1. SUMMARY. THE APELLATE COMMITTEE OF THE HOUSE OF LORDS HAS STAYED THE EXECUTION OF AN ORDER THAT RIO TINTO ZINC EXECUTIVES GIVE EVIDENCE IN THE WESTINGHOUSE CASE UNTIL THE LORDS HAVE HEARD THE EXECUTIVES' APPEAL. THE APPEAL IS LIKELY TO BE HEARD IN OCTOBER. ENDSUMMARY

2. ON MONDAY, JULY 25, SEVEN SENIOR RTZ EXECUTIVES, HEADED BY SIR MARK TURNER, THE CHAIRMAN, ASKED THE COURT OF APPEALS TO STAY ITS ORDER OF MAY 26, WHICH OBLIGED
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THEM TO ATTEND AND GIVE TESTIMONY IN THE WESTINGHOUSE CASE, PENDING THE HEARING BY THE HOUSE OF LORDS OF THEIR APPEAL AGAINST IT. THE APPEAL EVIDENTLY WAS PROMPTED BY THE GRANT OF IMMUNITY BY JUDGE MERHIGE ON JULY L8. THE COURT OF APPEALS DISMISSED THE APPLICATION. LORD DENNING, PRESIDING, SAID THAT IF AN APPEAL WAS GOING TO BE MADE IT SHOULD HAVE BEEN MADE LONG AGO.

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3. LORD DENNING DID NOT COMMENT ON SUBMISSIONS MADE IN THIS CONNECTION BY PETER GIBSON, APPEARING FOR THE UK ATTORNEY GENERAL. GIBSON SAID THAT THE U.S. GOVERNMENT WANTED EVIDENCE FOR GRAND JURY PROCEEDINGS WHICH ARE TAKING PLACE IN THE U.S. ON AN ANTI-TRUST CASE. HE ARGUED THAT TO USE LETTERS ROGATORY OF CIVIL PROCEEDINGS FOR CRIMINAL PROCEEDINGS WAS CONTRARY TO THE HAGUE CONVENTION OF L968. THE UKG HAD EXPRESSED ITS DISQUIET TO THE U.S. AUTHORITIES AND HOPED TO HAVE DISCUSSIONS WITH THEM. A DECISION ON WHETHER TO INTERVENE IN THE LORDS APPEAL CASE WOULD DEPEND UPON THESE DISCUSSIONS.

4. GIBSON SAID RTZ HAD WRITTEN TO THE UKG INDICATING THAT ITS EVIDENCE COULD RAISE QUESTIONS OF PUBLIC IN-TEREST. HE SAID EVIDENCE THE RTZ EXECUTIVES MIGHT BE FORCED TO GIVE BEFORE THE U.S. COURT CONCERNING THE ALLEGED CARTEL MIGHT AFFECT RELATIONS WITH FOUR FOREIGN GOVERNMENTS. REPRESENTATIONS HAD BEEN MADE TO THE FOREIGN OFFICE BY FOREIGN GOVERNMENTS.

5. LATER THAT DAY IT BECAME APPARENT THAT THE GOVERN-MENT MIGHT BECOME MORE DEEPLY INVOLVED. THE FOREIGN OFFICE SAID, "THIS INTERVENTION HAS BEEN MADE IN ORDER THAT THE GOVERNMENT SHOULD HAVE TIME TO CONSIDER A NUMBER OF ASPECTS OF POSSIBLE FOREIGN INTEREST BEARING LIMITED OFFICIAL USE

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ON THIS CASE." IT WAS REPORTED THAT THE AUSTRALIAN, CANADIAN, FRENCH AND SOUTH AFRICAN GOVERNMENTS HAD PUT STRONG DIPLOMATIC PRESSURE ON BRITAIN TO PREVENT RTZ FROM BEING FORCED TO TESTIFY.

6. IN ANY EVENT WHEN THE HEARING RESUMED AT THE U.S. EMBASSY JULY 25, THE RTZ WITNESSES REFUSED TO ANSWER QUESTIONS POSED BY WESTINGHOUSE'S COUNSEL, DESPITE THE ACTION OF THE COURT OF APPEALS. THEY DO SO ON THE BASIS THAT THEY WERE APPEALING TO THE HOUSE OF LORDS FOR A STAY OF THE COURT OF APPEALS ORDER.

7. ON JULY 27 COUNSEL FOR THE RTZ EXECUTIVES,IN ARGUING FOR A STAY OF EXECUTION, SAID THE US JUSTICE DEPARTMENT HAD ORDERED THEM TO GIVE EVIDENCE - AND HAD GRANTED THEM IMMUNITY FROM PERSONAL PROSECUTION TO NEGATE THEIR PLEADING OF THE 5TH AMENDMENT SO THAT THEIR EVIDENCE WOULD BE AVAILABLE TO A GRAND JURY EXAMINING THE URANIUM INDUSTRY AFFAIRS. THE CONVENTION WHICH ENABLES THE US COURTS TO GRANT EVIDENCE UNDER "LETTERS ROGATORY" APPLIED ONLY TO CIVIL AND COMMERCIAL MATTERS. THE GRAND JURY WAS SEEKING EVIDENCE - WHICH IT HAD BEEN UNABLE TO

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OBTAIN ELSEWHERE - WHICH MIGHT LEAD TO CRIMINAL PROSECU-
TIONS. WHILE WESTINGHOUSE'S COUNSEL ARGUED THAT THE
RTZ EXECUTIVES' APPLICATION INVOLVED NO SUBSTANTIAL

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EURE-00 FTC-01 JUSE-00 /106 W
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P R 011218Z AUG 77
FM AMEMBASSY LONDON
TO SECSTATE WASHDC PRIORITY 6673
INFO AMEMBASSY BRUSSELS
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QUESTION OF LAW AND SHOULD BE REFUSED, THE (UK) SOLICI-
TOR GENERAL (ARCHER) SUPPORTED IT. HE SAID "WITHIN
THE LAST WEEK, THE FOREIGN AND COMMONWEALTH OFFICE HAS
RECEIVED REPRESENTATIONS FROM CERTAIN FOREIGN GOVERN-
MENTS RAISING QUESTIONS RELATING TO THIS ACTION. THOSE
QUESTIONS MAY AFFECT THE RELATIONS OF THE UK WITH
FRIENDLY FOREIGN GOVERNMENTS WHO WOULD FEEL EMBARRASSED
IF THIS EVIDENCE WERE GIVEN AND WHO THEREFORE HOPE THAT
HER MAJESTY'S GOVERNMENT WILL TAKE STEPS TO PREVENT
THIS EMBARRASSMENT." WHEN THE SOLICITOR GENERAL WAS
ASKED HOW THE FOREIGN GOVERNMENTS COULD BE EMBARRASSED,
HE SAID HE HAD BEEN "SEVERELY WARNED" NOT TO GIVE THE
REASONS IN A PUBLIC HEARING OF THE COURT.

8. THE SOLICITOR GENERAL ALSO SAID IT WAS NOT AN ISSUE
OF PUBLIC POLICY WITH WHICH THE BRITISH GOVERNMENT WAS

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DIRECTLY CONCERNED, BUT IT COULD BE THAT IT WOULD FIND ITS RELATIONS WITH OTHER COUNTRIES--PARTICULARLY CANADA, A BIG SUPPLIER OF URANIUM--AFFECTED. THE GOVERNMENT WAS ALSO CONCERNEDTHATALTHOUGH THE INFORMATION WAS REQUIRED IN CIVIL PROCEEDINGS, THE AMERICAN DEPARTMENT OF JUSTICE HAD NOW TAKEN A HAND AND WANTED THE EVIDENCE FOR USE IN ANTI-TRUST PROCEEDINGS, TO WHICH THE INTERNATIONAL CONVENTION UNDER WHICH THE EVIDENCE WAS ORDERED DID NOT APPLY. HE SAID THERE WAS A CASE FOR CONSIDERING WHETHER THE JUSTICE DEPARTMENT'S INTERVENTION WAS NOT AN EXAMPLE OF "EXTENDING ANTI-TRUST JURISDICTION TO UK TERRITORY" TO MAKE UK CITIZENS AND COMPANIES DISCLOSE INFORMATION WHICH THEY WOULD NOT OTHERWISE HAVE TO DISCLOSE. THE CROWN WAS RELUCTANT TO INTERVENE IN THE CASE BUT IT WAS GENERAL PUBLIC POLICY THAT FOREIGN GOVERNMENTS SHOULD NOT EXTEND THEIR JURISDICTION INTO THIS COUNTRY TO THE DETRIMENT OF UK CITIZENS AND COMPANIES.

9. THE THREE LAW LORDS SITTING ON THE APPELLATE COMMITTEE EVENTUALLY GRANTED THE RTZ EXECUTIVES A STAY OF EXECUTION OF ORDER REQUIRING THEM TO GIVE EVIDENCE. THE STAY IS UNTIL THE FULL APPEAL IS HEARD BY THE LAW LORDS. LORD WILBERFORCE, PRESIDING, SAID THE APPEAL SHOULD HAVE A HIGH PRIORITY AMONG THE CASES TO BE HEARD AT THE BEGINNING OF THE NEXT LAW TERM IN OCTOBER.

10. ON JULY 29 THREE LAWYERS FOR WESTINGHOUSE (PROFESSOR KENNETH DAM, SAMUEL HAUBOLD, AND PAUL LEONARD) CALLED AT THE EMBASSY TO DISCUSS THE CASE AND TURNED OVER VOLUMINOUS DOCUMENTATION REGARDING IT. AFTER DESCRIBING THE ORIGINS OF THE CASE AND WESTINGHOUSE'S VIEW THEREOF, THEY RECOUNTED THE CHRONOLOGY OF RECENT



LEGAL ACTION, ADDING TO BUT NOT DIFFERING FROM LOCAL PRESS COVERAGE. THEY TOLD US THAT THE BRITISH GOVERNMENT IS NOW SIMULTANEOUSLY CONSIDERING TWO LINES OF ACTION; ASKING THE US GOVERNMENT TO WITHDRAW THE GRANTING OF IMMUNITY, AND, SECONDLY, JOINING IN THE APPEAL TO THE HOUSE OF LORDS (SO FAR THE BRITISH GOVERNMENT HAS ONLY AIDED RTZ IN ITS APPLICATION FOR A STAY OF EXECUTION).

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11. PROFESSOR DAM SUMMARIZED THE CONSIDERATIONS HE ASSUMED THE BRITISH GOVERNMENT HAS BEFORE IT AS FOLLOWS:

A. THE CASE DOES RAISE THE SPECTRE OF INVASION OF BRITISH SOVEREIGNTY, PARTICULARLY IF JUSTICE PUSHES ITS ANTI-TRUST INVESTIGATION TO AN ACTUAL TRIAL.

B. THERE IS PRESSURE FROM THE FOUR GOVERNMENTS ON THE UK, WHICH, HE NOTED, IS ITSELF NOT AN ACTIVE PARTICIPANT IN THE ALLEGED CARTEL.

C. THE CARTEL'S ACTIVITIES QUITE LIKELY WERE IN VIOLATION OF ARTICLE 85 OF THE TREATY OF ROME.

D. THE CARTEL OR ITS PARTICIPANTS MIGHT ALSO BE IN VIOLATION OF BRITISH LAW BY FAILING TO REGISTER PURSUANT TO THE BRITISH RESTRICTIVE PRACTICES ACT.

E. THE MAIN BRITISH ECONOMIC INTEREST IN THE CASE SHOULD BE AS A MASSIVE PURCHASER OF IMPORTED URANIUM.

12. THE BRITISH GOVERNMENT HAS NOT REVEALED NOR WERE THE WESTINGHOUSE LAWYERS AWARE OF THE NATURE OF THE FOREIGN PROTESTS. HOWEVER, THE LONDON TIMES IN AN ARTICLE ON JULY 26 NOTED THAT "AUSTRALIA AND CANADA HAVE ALREADY PASSED LAWS PREVENTING THEIR OWN COMPANIES

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P R 011218Z AUG 77
FM AMEMBASSY LONDON
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INFO AMEMBASSY BRUSSELS
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FROM PROVIDING ANY MATERIAL TO A UNITED STATES GRAND JURY INVESTIGATION INTO THE ALLEGED CARTEL, WHILE THE FRENCH ORGANIZATION ALLEGED TO HAVE BEEN A MEMBER OF THE CARTEL IS A QUASI-GOVERNMENT BODY. SOUTH AFRICA ALREADY HAS STRINGENT LAWS WHICH STRICTLY LIMIT WHAT CAN BE DIVULGED ABOUT THE COUNTRY'S URANIUM OPERATIONS. RTZ WHICH HAS URANIUM MINING INTERESTS IN AUSTRALIA, CANADA, NAMIBIA, SOUTH AFRICA AND THE UNITED STATES, IS THE ONE MAJOR COMPANY ALLEGED TO HAVE BEEN A MEMBEROF THE URANIUM CARTEL NOT PROTECTED SO FAR BY GOVERNMENT DECREE. THE FOREIGN REPRESENTATIONS TO THE BRITISH GOVERNMENT WERE TO THE EFFECT THAT IF RTZ WERE NOT PROTECTED THEIR OWN ACTIONS WOULD BE NULLIFIED."

13. COMMENT. SO FAR, THE EMBASSY HAS NOT RECEIVED ANY FORMAL APPROACHES FROM THE BRITISH GOVERNMENT, ALTHOUGH
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WE ARE AWARE OF THE APPROACHES MADE BY THE BRITISH EMBASSY IN WASHINGTON. PROFESSOR DAM'S SUMMARY OF THE ELEMENTS THAT SHOULD BE CONSIDERED BY THE BRITISH GOVERNMENT IS FAIRLY COMPREHENSIVE. HOWEVER, WE THINK IT LIKELY THAT TWO FACTORS, THAT THIS IS POTENTIALLY ONE MORE EXAMPLE OF EXTRATERRITORIAL APPLICATION OF US LAW AND SENSITIVITY TO THE DESIRES OF THE FOUR PROTESTING GOVERNMENTS, OUTWEIGH THE OTHERS. WE ALSO THINK THE BRITISH GOVERNMENT HAS A PROTECTIVE ATTITUDE TOWARDS RTZ IN THIS AFFAIR ANDDOESNOT WANT TO EXPOSE THE COMPANY TO POTENTIAL DAMAGE IN THE US COURTS. SHOULD THE JUSTICE DEPARTMENT NOT WITHDRAW ITS GRANT OF IMMUNITY, THERE APPEARS TO BE AT LEAST A FAIR POSSIBILITY THAT WHEN THE APPEAL GOES TO THE HOUSE OF LORDS, THE GOVERNMENT WILL AT LEAST SUPPORT THE APPEAL, AND MAY INVOKE CROWN PRIVILEGE.

BREWSTER

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# Message Attributes

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